

EXHIBIT 1

PUBLIC VERSION

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION
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5 IN RE: HIGH-TECH EMPLOYEE)
6 ANTITRUST LITIGATION) No. 11-CV-2509-LHK
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8
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20 Reported by:
21 ASHLEY SOEVYN
22 CSR No. 12019
23 Job No. 1545691
24
25 PAGES 1 - 476

1	MR. GLACKIN: Objection, vague,	08:19:35
2	mischaracterizes.	08:19:37
3	BY MR. PICKETT:	08:19:38
4	Q. That's the second part of the analysis?	08:19:38
5	A. I also don't accept their word of member,	08:19:42
6	that phrase should not be added. I was asked to do	08:19:45
7	it to answer the question as it's phrased here.	08:19:50
8	Q. Let's do this -- (Cross-talking.)	08:19:53
9	A. With this question, if that's the -- if	08:19:55
10	that's what you're asking me, was I provided this	08:19:58
11	question, the answer is yes.	08:20:01
12	Q. So let's go back. It's a two-part analysis	08:20:02
13	as reflected in 10a and 10b of your report,	08:20:05
14	correct?	08:20:09
15	A. That's correct.	08:20:09
16	Q. And as to whether you were looking at	08:20:10
17	quantifying the amount of suppressed compensation	08:20:14
18	suffered by a particular group, you're saying you	08:20:16
19	only looked at whether each class -- you could	08:20:20
20	quantify the amount of suppressed compensation	08:20:24
21	suffered by each class, not each class member?	08:20:27
22	A. That's correct.	08:20:31
23	Q. So you haven't looked at whether there is a	08:20:32
24	class-wide method capable of quantifying the amount	08:20:34
25	of suppressed compensation suffered by each class	08:20:38

1	member?	08:20:41
2	MR. GLACKIN: Objection, vague.	08:20:41
3	THE WITNESS: That was not my task.	08:20:44
4	BY MR. PICKETT:	08:20:47
5	Q. So that would be, "Yes, I have not looked	08:20:47
6	at that"?	08:20:50
7	A. That's correct.	08:20:51
8	Q. And when you looked at the method capable	08:20:56
9	of quantifying the amount of suppressed compensation	08:21:02
10	suffered by each class, is that reduction an	08:21:05
11	aggregate number for each class?	08:21:14
12	A. Well, I provided numbers defendant by	08:21:20
13	defendant.	08:21:25
14	Q. Right. Year by year a percentage --	08:21:25
15	(Cross-talking.)	08:21:27
16	A. Year by year -- (Cross-talking.)	08:21:27
17	Q. And that was year by year then, an	08:21:29
18	aggregate number for the whole class?	08:21:31
19	A. Defendant by defendant.	08:21:35
20	Q. And you haven't examined whether individual	08:21:40
21	class members, defendant by defendant, year by year,	08:21:45
22	were impacted equally?	08:21:50
23	A. Well, in answering that question, I have	08:21:54
24	done a little bit of work on the -- on	08:21:55
25	distinguishing members of the class, if you look at	08:22:01

1	common proof, so I'm not sure.	08:23:23
2	BY MR. PICKETT:	08:23:26
3	Q. It refers to a reliable class-wide or	08:23:26
4	formulaic method. Do you see that?	08:23:29
5	A. I do see that.	08:23:30
6	Q. And do you not think that's class -- that's	08:23:31
7	a proof common to the class?	08:23:33
8	A. Well, I am not a lawyer, I don't know	08:23:35
9	whether I want to put words into your mouth or into	08:23:38
10	an attorney's mouth, but these are the words that I	08:23:42
11	took to be my task and I followed that out.	08:23:43
12	Q. Your conduct regressions go to step one,	08:23:45
13	correct?	08:23:48
14	MR. GLACKIN: Objection, vague.	08:23:48
15	THE WITNESS: No.	08:23:49
16	BY MR. PICKETT:	08:23:54
17	Q. No?	08:23:54
18	A. They contribute to the argument, one of the	08:23:55
19	things that contributes, but the conduct	08:23:57
20	regressions -- if you're talking about the	08:23:59
21	regressions that use the conduct variable, that has	08:24:00
22	to do with the formulaic method of estimating the	08:24:03
23	amount of suppression of compensation, which was	08:24:06
24	task b.	08:24:09
25	Q. When you say, "all or most members of each	08:24:10

1	Q. And what percentage is most?	08:30:53
2	MR. GLACKIN: Objection, asked and	08:30:54
3	answered.	08:30:57
4	THE WITNESS: That suggests a precision	08:30:57
5	which this evidence does not allow.	08:31:00
6	BY MR. PICKETT:	08:31:03
7	Q. Give me a range?	08:31:03
8	MR. GLACKIN: Objection, asked and	08:31:04
9	answered.	08:31:04
10	THE WITNESS: Greater than 50 percent.	08:31:04
11	BY MR. PICKETT:	08:31:07
12	Q. Thank you. Move on to a newer topic.	08:31:07
13	Do you agree that each of the seven	08:31:14
14	defendants compete in one or more labor markets that	08:31:15
15	are far broader than the total seven companies?	08:31:20
16	A. Well, you know, we're going to get in	08:31:25
17	trouble with words all the time. I would definitely	08:31:28
18	agree that they hire employees, not just from some	08:31:30
19	defendants, but much more broadly.	08:31:34
20	Q. Do you know how big the labor pool is for	08:31:42
21	each of the seven defendants?	08:31:47
22	A. I have a rough idea.	08:31:50
23	Q. What is that?	08:31:51
24	A. I have a rough idea in terms of the amount	08:31:52
25	of interdefendant movement has occurred versus the	08:31:55

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1	econometric equation. 08:41:53
2	Q. But that just -- it shows an average, 08:41:55
3	doesn't it? 08:41:57
4	MR. GLACKIN: Objection -- 08:41:58
5	BY MR. PICKETT: 08:41:59
6	Q. Pure regression analysis just shows an 08:41:59
7	average year by year, defendant by defendant? 08:42:01
8	A. Shows an average? It's used to compute an 08:42:03
9	average. It allows you to distinguish the impact by 08:42:08
10	age, for example. But what I've done is I've 08:42:14
11	computed an impact average across age, so there's a 08:42:17
12	control for difference in age composition of the 08:42:21
13	various defendants. 08:42:27
14	Q. Does the regression analysis allow you to 08:42:28
15	pinpoint what an individual class member's damages 08:42:32
16	might be? 08:42:35
17	A. Well, it could, but it would have to be 08:42:35
18	conducted in a much, more complete way. I will give 08:42:38
19	you an example, which is -- you got to know -- you 08:42:40
20	got to know a lot more details about the individuals 08:42:43
21	than I have in that equation in order to have any 08:42:47
22	kind of sensible statement with regard to individual 08:42:49
23	by individual. 08:42:51
24	For example, let me complete this, please. 08:42:52
25	For example, an education is certainly going to be 08:42:54

1	material consideration in talking about the impact	08:42:58
2	of cold calling. I've studied equations that had	08:43:00
3	the education variables included. But I think it	08:43:04
4	was Google, we lacked education data from several of	08:43:08
5	the defendants, and therefore, we decided to exclude	08:43:12
6	it. That's an example of -- of additional	08:43:15
7	information that would be needed in order to do an	08:43:17
8	individual by individual damage analysis, which by	08:43:22
9	the way, I was not instructed to do.	08:43:25
10	Q. Does your wage suppression regression	08:43:27
11	analysis allow you to figure out which individual	08:43:29
12	class members were not -- were not harmed and which	08:43:32
13	were the most category we went through earlier were	08:43:36
14	harmed?	08:43:40
15	A. That's a repeat of what I just said. If	08:43:41
16	you want to talk on an individual by individual	08:43:43
17	basis, you've got to set up this equation so that	08:43:45
18	you include almost all the reasons why people are	08:43:49
19	different. And the most obvious thing that is not	08:43:53
20	in there is the education variable. So had I been	08:43:58
21	asked to formulate an individual by individual	08:44:01
22	estimate, I would have -- I supposed would put a	08:44:04
23	subset of defendants for which I had the education	08:44:07
24	variable, and I don't know what I would do with the	08:44:11
25	rest. But that was not my task.	08:44:13

1	records are linked through their Social Security	08:45:22
2	numbers. But for non-defendant hirees, we have no	08:45:25
3	idea where they came from. They might have been not	08:45:29
4	employed. They might have come from another firm.	08:45:32
5	The data sets that we have don't allow us to do	08:45:33
6	that.	08:45:38
7	Q. So you have no idea how many people Apple	08:45:38
8	hired from Microsoft or Oracle or IBM; is that your	08:45:41
9	testimony?	08:45:45
10	A. That's my understanding of the database	08:45:45
11	that we have.	08:45:47
12	Q. And did you ask for that data?	08:45:48
13	A. We asked for it, yeah.	08:45:49
14	Q. And why did you ask for it, was it	08:45:51
15	relevant?	08:45:53
16	A. Well, when you start out, you cast a wide	08:45:54
17	net, you're not sure exactly what you need, so you	08:45:56
18	want to have as much as possible about the career	08:45:59
19	paths for each and every employee who might have	08:46:02
20	been affected.	08:46:05
21	Q. And when you were told -- you were told it	08:46:05
22	was not available; is that your testimony?	08:46:07
23	A. That's correct.	08:46:10
24	Q. Did you get anything on that topic -- any	08:46:11
25	information about where the seven defendants were	08:46:13

1	hiring people from?	08:46:17
2	A. I'm trying to think of the recruiting data.	08:46:21
3	I may have that information, but that is not	08:46:23
4	something that's been a focus of my energy.	08:46:27
5	Q. So could you answer the question, did you	08:46:34
6	get anything on that topic?	08:46:36
7	MR. GLACKIN: Objection, asked and	08:46:37
8	answered.	08:46:39
9	BY MR. PICKETT:	08:46:39
10	Q. It's just not been the focus, that really	08:46:39
11	doesn't answer whether you got anything on that?	08:46:43
12	MR. GLACKIN: You're misstating what his	08:46:46
13	answer was, Mr. Pickett.	08:46:47
14	THE WITNESS: I'm trying to tell you	08:46:49
15	that -- I'm unlike a computer, I don't remember	08:46:50
16	everything forever.	08:46:54
17	BY MR. PICKETT:	08:46:55
18	Q. What do you remember? Do you remember	08:46:55
19	getting anything? Do you remember you didn't get	08:46:57
20	what you asked for? Did you get anything?	08:46:58
21	MR. GLACKIN: Objection, asked and	08:47:01
22	answered.	08:47:01
23	THE WITNESS: What I'm trying to say is	08:47:01
24	that we had two databases. One was the payroll	08:47:03
25	records from the firm, the other ones were	08:47:06

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1	recruiting data. And I'm -- I'm very firm in the	08:47:14
2	opinion that the payroll record didn't include	08:47:17
3	previous employee, and certainly the data I	08:47:20
4	received -- the data analysis I carried out applied	08:47:22
5	to a data set that did not have previous employer, I	08:47:24
6	said employee, but previous employer for their	08:47:31
7	records, unless it was a defendant.	08:47:33
8	BY MR. PICKETT:	08:47:37
9	Q. Did Adobe produce former employee --	08:47:37
10	employer data?	08:47:41
11	A. Well, I was not quite finished with my	08:47:43
12	answer. That's -- there's another data set, which	08:47:45
13	is a recruiting data set. And I have not examined	08:47:47
14	that carefully. I was asked -- I asked them if the	08:47:52
15	recruiting data set gave us useful information about	08:47:55
16	the intensity of cold calling, and Econ One's answer	08:47:59
17	was that it didn't -- wasn't going to be useful	08:48:04
18	because of complexities and difficulties with the	08:48:06
19	databases.	08:48:08
20	But now that I think about it, it's	08:48:09
21	possible that recruiting data might have made	08:48:11
22	reference to the sources of these hires that the --	08:48:13
23	the non-defendant sources of the hirings.	08:48:19
24	Q. Did it, or didn't it? You say it's	08:48:22
25	possible? Anything is possible.	08:48:25

1	The exact source of who they hired from doesn't have	08:49:13
2	any material impact on the analysis that I carried	08:49:17
3	out.	08:49:19
4	I know that they did not come from	08:49:20
5	defendants, but whether they came from some other --	08:49:22
6	one of Microsoft or some other firm, it did not seem	08:49:24
7	material.	08:49:27
8	Q. Did all of these other companies who were	08:49:31
9	hiring -- well, let me ask you this -- let me turn	08:49:38
10	it the other way.	08:49:40
11	Have you looked at how many people hired	08:49:42
12	from the seven defendants who were outside the group	08:49:45
13	of seven defendants?	08:49:48
14	A. No.	08:49:52
15	Q. You haven't looked at that at all?	08:49:52
16	A. No, I don't have data on that.	08:49:56
17	Q. Were you aware that companies, like	08:49:56
18	Microsoft and Oracle and IBM and so on, that they	08:49:58
19	were, in fact, cold calling some employees at the	08:50:02
20	seven companies?	08:50:07
21	A. Well, I was aware, not because of the data	08:50:09
22	that I've been studying, but because of these	08:50:12
23	depositions and the documents haven't been produced.	08:50:14
24	It's pretty obvious that there was issues of	08:50:16
25	competition that go beyond the defendants.	08:50:20

1	Q. So they were cold calling?	08:50:22
2	A. You're asking -- (Cross-talking.)	08:50:28
3	Q. So the non-defendants were cold calling --	08:50:28
4	(Cross-talking.)	08:50:30
5	MR. GLACKIN: Excuse me, he was trying to	08:50:30
6	answer your question. Give him a minute -- a second	08:50:31
7	to answer your question.	08:50:34
8	THE WITNESS: So I have to say my	08:50:37
9	impression was yes. But if that were not the case,	08:50:38
10	I would not be entirely surprised.	08:50:40
11	BY MR. PICKETT:	08:50:43
12	Q. Why?	08:50:43
13	A. But the impression is yes.	08:50:44
14	Q. Why wouldn't you be surprised?	08:50:46
15	A. Specific non-defendants cold calling on	08:50:49
16	defendants? I don't know what they were -- I don't	08:50:51
17	know what these non -- who the non-defendants are,	08:50:55
18	who was doing the hiring, what kinds of employees	08:50:58
19	they were looking for.	08:51:01
20	Q. You don't know. So it would just be rank	08:51:02
21	speculation?	08:51:06
22	A. Well, that's an overstatement of the	08:51:08
23	ambiguity of my opinion. I have read documents in	08:51:11
24	the record and depositions that suggests that there	08:51:16
25	was, indeed, cold calling going on by the	08:51:20

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1	non-defendants.	08:51:23
2	In fact, the defendants could have -- were	08:51:24
3	allowed by these agreements to do cold calling	08:51:26
4	relative to the non-defendants.	08:51:31
5	Q. And within each other in many instances,	08:51:31
6	right?	08:51:35
7	A. You mean within each other, but not	08:51:35
8	violating their bilateral agreements.	08:51:39
9	Q. Right. Correct?	08:51:41
10	A. That's correct.	08:51:43
11	Q. And you don't have any data as to whether	08:51:44
12	the frequency of the cold calling increased or	08:51:46
13	decreased, do you?	08:51:49
14	A. Well -- (Cross-talking.)	08:51:49
15	MR. GLACKIN: Objection, vague, and asked	08:51:50
16	and answered.	08:51:51
17	THE WITNESS: We really wanted that,	08:51:52
18	obviously, because that could have been extremely	08:51:54
19	useful. But the defendants have not produced useful	08:51:56
20	data with regard to cold calling frequencies.	08:52:01
21	BY MR. PICKETT:	08:52:04
22	Q. And you don't know if a by -- bilateral	08:52:04
23	agreement there was no ability to cold call into a	08:52:06
24	particular company if the employer just cold called	08:52:09
25	somebody else?	08:52:12

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1	MR. GLACKIN: Objection, vague.	08:52:12
2	THE WITNESS: I said I don't have	08:52:16
3	information about the intensity of cold calling	08:52:17
4	either during their conspiracy period, before it or	08:52:20
5	after it.	08:52:24
6	BY MR. PICKETT:	08:52:25
7	Q. So you don't know whether the overall cold	08:52:25
8	calling within any of the labor markets -- one of	08:52:27
9	the defendants is involved, increased, decreased, or	08:52:32
10	stayed the same?	08:52:36
11	MR. GLACKIN: Objection, vague.	08:52:39
12	THE WITNESS: I indicated that we don't	08:52:40
13	have that cold calling information. We very much	08:52:41
14	wanted it, but we don't have it.	08:52:43
15	BY MR. PICKETT:	08:52:46
16	Q. Do you have any information that indicates	08:52:46
17	whether the level of hiring that consummated hiring,	08:52:46
18	as you put it, for any of the seven defendants	08:52:50
19	increased or decreased as a result of the alleged	08:52:53
20	bilateral agreements?	08:52:58
21	A. Well, I -- we have the hiring information,	08:53:01
22	but I made no attempt to estimate a model that you	08:53:04
23	would allow me to answer that question. That was	08:53:09
24	not my task.	08:53:11
25	Q. So as far as you know, the levels of hiring	08:53:13

1 order to know who -- what might have been affected. 08:55:42
2 In that sense, you would have to have record of cold 08:55:46
3 calls not made, and we don't have that. 08:55:49
4 So what instead we did is -- well, not 08:55:52
5 instead, we -- having identified the potential of 08:55:54
6 differential impacts depending upon skill sets, and 08:56:01
7 the three frameworks says these guys are all tied 08:56:04
8 together through their internal equity 08:56:07
9 considerations. And this thing is spread across 08:56:10
10 everybody in the firm. So in a sense, the market is 08:56:14
11 collectively for everybody. 08:56:17
12 Q. So the regression -- your regression 08:56:18
13 analysis on wage suppression answers all of that, 08:56:19
14 all of those issues? 08:56:23
15 A. It speaks to all those issues, yeah. 08:56:25
16 Q. And your regression -- wage suppression 08:56:27
17 regression analysis can answer on the question 08:56:30
18 whether a sous chef at Intel's wages were suppressed 08:56:33
19 during the class period? 08:56:37
20 A. No, they're not. I've already told you 08:56:38
21 that. It's intended to estimate the conversation 08:56:40
22 suppression by defendant, by year. And carrying 08:56:44
23 that out, I used as much individual information as I 08:56:49
24 had really, which is the age and -- but the model is 08:56:53
25 not intended to give you an estimate of how the 08:56:59

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1 damages varied with age, but instead to control for 08:57:01
2 any composition differences between the firms so 08:57:05
3 that you get as accurate as possible an estimate of 08:57:08
4 the firm by firm effect year by year. 08:57:11

5 Q. But if you look at individual class 08:57:14
6 members, like this sous chef, your regression 08:57:15
7 analysis cannot tell whether there was any 08:57:17
8 suppression of wages for that individual, correct? 08:57:23

9 MR. GLACKIN: Objection. 08:57:25

10 THE WITNESS: That's correct. That was not 08:57:26
11 part of the task that I was assigned. 08:57:27

12 BY MR. PICKETT: 08:57:37

13 Q. In a competitive market, what does it imply 08:57:37
14 about two products or services if one is able to 08:57:41
15 command double of the price? 08:57:44

16 A. Now, are you talking about facts now or 08:57:46
17 theory? 08:57:48

18 Q. Theory. 08:57:48

19 A. From a conceptual framework, so can you be 08:57:48
20 clear to me what the -- what the -- what do you mean 08:57:52
21 by a competitive model, you mean a simple supply and 08:57:55
22 demand model? 08:57:58

23 Q. Sure. 08:58:00

24 A. So can you repeat your question again? 08:58:00

25 Q. In a competitive market, what does it imply 08:58:01

1	that the key rivals of the seven defendants were	09:00:44
2	only the other six defendants?	09:00:47
3	A. No, it's not.	09:00:48
4	Q. So was it your testimony the key rivals	09:00:50
5	weren't poaching defendants' employees during the	09:00:52
6	class period?	09:00:54
7	A. No, that is not my testimony.	09:00:56
8	Q. Because you know they were, correct?	09:00:59
9	A. Well, this is a reference to the poaching	09:01:04
10	that was not done, not a reference to the poaching	09:01:06
11	that was done.	09:01:10
12	Q. But I'm asking you about the poaching that	09:01:10
13	was done. You know that lots and lots and lots of	09:01:12
14	non-defendants were poaching from these seven	09:01:16
15	defendants, correct --	09:01:19
16	MR. GLACKIN: Objection, vague.	09:01:20
17	BY MR. PICKETT:	09:01:21
18	Q. -- during the class period?	09:01:21
19	MR. GLACKIN: Sorry, I did not mean to	09:01:23
20	interrupt you.	09:01:26
21	THE WITNESS: That's correct.	09:01:26
22	BY MR. PICKETT:	09:01:27

1	Q. You were wrong, weren't you?	09:35:38
2	A. I misspoke.	09:35:38
3	Q. So let me ask you to look at the data you	09:35:39
4	do have that you cited in your own report. And,	09:35:41
5	once again, the number of talent acquired and talent	09:35:43
6	lost, the vast majority comes from nondefendants,	09:35:47
7	correct?	09:35:51
8	MR. GLACKIN: Objection, vague.	09:35:55
9	THE WITNESS: The majority definitely	09:35:57
10	does.	09:35:59
11	BY MR. PICKETT:	09:36:01
12	Q. And there was information flow and price	09:36:01
13	discovery resulting from all of those hires and	09:36:04
14	losses, correct?	09:36:08
15	A. That's correct.	09:36:09
16	Q. And all of the cold calls that might have	09:36:09
17	been associated with those, correct?	09:36:12
18	A. That's correct.	09:36:14
19	[REDACTED]	[REDACTED]
20	[REDACTED]	[REDACTED]
21	[REDACTED]	[REDACTED]
22	MR. GLACKIN: Objection, foundation.	09:36:25
23	THE WITNESS: You made a reference to the	09:36:27
24	firms, that there was information flowing between	09:36:29
25	the firms.	09:36:31

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1	BY MR. PICKETT:	09:36:32
2	Q. Between the employees -- between the	09:36:32
3	employees and potential employees?	09:36:34
4	A. Well, I'm only making a point that the	09:36:36
5	amount of information flow was suppressed. I'm not	09:36:39
6	saying there was no information flow.	09:36:42
	[REDACTED]	[REDACTED]
24	Q. Your regression analysis?	09:37:32
25	A. The regression, yeah.	09:37:33

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1	up of some groups, like software engineers, but you	09:41:53
2	can still be rated because there are key software	09:41:58
3	engineers who are superior and they deserve a whole	09:42:00
4	lot more than average.	09:42:03
5	Q. And the individual can be paid higher or	09:42:04
6	lower, depending on a lot of individual factors,	09:42:06
7	true?	09:42:09
8	A. Within the firm, that -- that would be the	09:42:09
9	case, that there would be some consideration of	09:42:10
10	performance, that's correct.	09:42:13
11	Q. And -- and other factors, I assume?	09:42:15
12	A. Other than performance?	09:42:17
13	Q. Yes. Skill set --	09:42:17
14	A. Well, I --	09:42:23
15	Q. -- experience?	09:42:23
16	A. I take performance to --	09:42:26
17	Q. Encompass everything?	09:42:28
18	A. -- encompass everything.	09:42:31
19	Q. Fair enough. The purpose of benchmarking	09:42:31
20	is to make sure that compensation is competitive,	09:42:32
21	correct?	09:42:36
22	MR. GLACKIN: Objection, vague.	09:42:36
23	THE WITNESS: It's to -- it's to have a	09:42:37
24	salary -- internal salary structure that -- that	09:42:42
25	reduces the risk of losing valuable employees --	09:42:45

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1	Q. Well --	09:42:50
2	A. -- if that's what you mean by	09:42:50
3	"competitive," I will agree.	09:42:52
4	Q. You look to your talent competitors to see	09:42:54
5	what they're paying and you want to make sure your	09:42:56
6	compensation relative to them is competitive,	09:42:58
7	correct?	09:43:00
8	A. Yeah, actually, only to the extent that	09:43:02
9	there's a competitive force. You don't want to	09:43:04
10	match some high salary. Some firm that has --	09:43:07
11	offers high salary, if you are not feeling a	09:43:09
12	competitive force from them.	09:43:14
13	Q. Let me ask you to focus on what we'll call	09:43:16
14	the "but for world," and that's a world in which the	09:43:19
15	alleged bilateral agreements did not exist during	09:43:23
16	the class period. You understand the concept?	09:43:26
17	A. I do.	09:43:29
18	Q. All right. In the "but for world," would	09:43:32
19	there have been more cold calling over all?	09:43:34
20	A. I -- I don't have any evidence or data that	09:43:43
21	would support that conclusion, so --	09:43:46
22	Q. So, go ahead.	09:43:51
23	A. Well, I'll leave it at what I said.	09:43:54
24	Q. So the cold calling would have been	09:43:57
25	redistributed in a "but for world"?	09:43:59

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1	MR. GLACKIN: Objection,	09:44:03
2	mischaracterizes.	09:44:03
3	BY MR. PICKETT:	09:44:04
4	Q. The total amount wouldn't change, but it	09:44:04
5	might go to different people?	09:44:05
6	A. I didn't say that. I recognize that that	09:44:07
7	was what was embedded in your question.	09:44:09
8	Q. So --	09:44:11
9	A. But there's no evidence to support that.	09:44:12
10	Q. So you don't know one way or another	09:44:15
11	whether the level of cold calling would have been	09:44:17
12	the same and redistributed, whether it would have	09:44:19
13	gone up, whether it would have gone down, in the	09:44:23
14	"but for world"?	09:44:26
15	A. Well, yeah, absolutely. You would need to	09:44:28
16	carry out an econometric exercise to answer that	09:44:30
17	question, and we don't have the data that allows us	09:44:33
18	to do it.	09:44:37
19	Q. So you don't know?	09:44:38
20	A. I answered that question already. I said,	09:44:41
21	we don't have the data that allows us to	09:44:45
22	determine -- to estimate in the "but for world" how	09:44:47
23	much cold calling would occur.	09:44:50
24	Q. In the "but for world," would there have	09:44:52
25	been -- would there have been an increase in	09:44:55

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1	THE WITNESS: Well, the data analysis I	09:46:48
2	carried out, of course, has to target compensation,	09:46:50
3	so I'm asking what would have happened in a "but for	09:46:54
4	world" regarding compensation determination. And	09:46:56
5	I've controlled for a bunch of other variables in	09:46:58
6	this equation, and -- but I've made no attempt to	09:47:01
7	determine the impact of cold calling on anything,	09:47:05
8	except for the compensation.	09:47:06
9	BY MR. PICKETT:	09:47:10
10	Q. Would the total number of hires by each of	09:47:10
11	the defendants in the class period been the same in	09:47:13
12	the "but for world"?	09:47:15
13	MR. GLACKIN: Objection, vague.	09:47:19
14	THE WITNESS: That isn't something that	09:47:27
15	I've explored.	09:47:29
16	BY MR. PICKETT:	09:47:30
17	Q. So you don't know, correct?	09:47:30
18	A. That's correct.	09:47:31
19	Q. All right. Let me use an example. Adobe	09:47:32
20	and Apple had an agreement which under Figure 1	09:47:37
21	started May 2005. And I want to walk through what	09:47:42
22	you believe would have happened in the "but for	09:47:51
23	world" absent that agreement, all right?	09:47:54
24	A. Okay.	09:47:58
25	Q. So presumably this would -- process would	09:47:59

1	start when an employee at Adobe would have gotten a	09:48:03
2	cold call she otherwise would not have received,	09:48:06
3	right?	09:48:09
4	A. That's correct.	09:48:09
5	Q. And you would agree that only some Adobe	09:48:10
6	employees would get a cold call from Apple in the	09:48:13
7	"but for world"?	09:48:16
8	A. That's correct.	09:48:18
9	Q. And then the particular Adobe employee	09:48:18
10	would have to decide to accept the cold call,	09:48:20
11	correct?	09:48:22
12	MR. GLACKIN: Objection, assumes facts,	09:48:22
13	vague.	09:48:24
14	THE WITNESS: I don't know what you mean by	09:48:26
15	"accept the cold call." (Cross-talking.)	09:48:28
16	MR. PICKETT: Well, I get --	09:48:29
17	(Cross-talking.) Phone or e-mail, but I get cold	09:48:30
18	calls all the time. They say, "I'm here to talk	09:48:32
19	about" -- and I say, "Thank you," and hang up. So	09:48:36
20	some people don't engage in cold calls.	09:48:39
21	THE WITNESS: So by "accept" you mean	09:48:41
22	engage?	09:48:43
23	MR. PICKETT: Yes.	09:48:43
24	THE WITNESS: Okay. Yes, not all would	09:48:44
25	engage in response to a cold call.	09:48:45

1	MR. PICKETT: All right.	09:48:47
2	THE WITNESS: I assume most people would	09:48:47
3	answer the phone.	09:48:48
4	BY MR. PICKETT:	09:48:50
5	Q. Depends. These days you can screen the	09:48:50
6	call pretty well.	09:48:53
7	A. That's true.	09:48:55
8	Q. So we have an Adobe employee. She would	09:48:56
9	have gotten -- she's one of the people at Adobe who	09:48:59
10	would have gotten a cold call and other people who	09:49:03
11	got cold calls from Adobe in a "but for world,"	09:49:05
12	we're saying she would engage, so far, right?	09:49:08
13	A. "Engage," meaning find out more about the	09:49:15
14	possibilities?	09:49:16
15	Q. Correct.	09:49:16
16	A. Yes.	09:49:17
17	Q. And you would agree that not everybody	09:49:17
18	would engage, so to speak?	09:49:19
19	A. I would agree.	09:49:21
	[REDACTED]	[REDACTED]

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1 this water cooler talk about, "Oh, I had this offer 10:20:35
2 from Apple. And, boy, did I get a great new package 10:20:38
3 with this big increase in my stock options." That 10:20:44
4 kind of stuff is going to go on at the water -- at 10:20:47
5 the water cooler and it's going to be a response to 10:20:48
6 other employees. 10:20:49

7 Q. Is it your view that in the "but for 10:20:51
8 world," an increase in compensation to a single 10:20:54
9 employee would trigger a higher level of 10:20:57
10 compensation for all employees? 10:21:02

11 A. It could. I wouldn't say "would." It 10:21:03
12 could. It depends upon the -- how much information 10:21:06
13 is revealed by that possibility. 10:21:10

14 Q. And what level of compensation increase 10:21:11
15 would this single employee need to obtain, in order 10:21:14
16 for it to impact the level of compensation for all 10:21:17
17 employees? 10:21:20

18 A. I don't have a specific number in mind. 10:21:22

19 Q. How could a single employee's higher 10:21:25
20 compensation result in an across-the-board change in 10:21:28
21 compensation? 10:21:31

22 A. Maybe I should reveal that I have a little 10:21:33
23 expertise in this because I was the chairman of the 10:21:35
24 economics department at UCLA for a five-year period 10:21:37
25 in the 1980s. 10:21:42

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1	Q. That's a legitimate assumption, right?	10:57:08
2	A. That's a -- it's a possibility.	10:57:11
3	Q. And what does it tell you about the damages	10:57:17
4	to that Microsoft employee who is now in the	10:57:19
5	class?	10:57:21
6	A. Like I said before, I understand what	10:57:33
7	you're asking me, but I can't offer a off-the-cuff	10:57:34
8	explanation without thinking through it clearly.	10:57:41
9	Q. As you sit here right now, can you think of	10:57:44
10	any way in which that Microsoft employee is not	10:57:48
11	benefited by getting the new job?	10:57:51
12	MR. GLACKIN: Objection, vague, incomplete	10:57:53
13	hypothetical.	10:57:55
14	THE WITNESS: Well, the suppression of	10:57:56
15	information about the job opportunities is going to	10:57:59
16	be suppressing conversation, not just of the	10:58:03
17	defendants, but elsewhere as well.	10:58:05
18	BY MR. PICKETT:	10:58:08
19	Q. So her Microsoft salary was suppressed?	10:58:08
20	A. It's possible. You've asked me in this	10:58:11
21	hypothetical way in which we could interpret	10:58:14
22	this would lead to --	10:58:19
23	Q. How does it work -- (Cross-talking.)	10:58:22
24	MR. GLACKIN: Are you finished?	10:58:24
25	THE WITNESS: You asked me whether I can	10:58:24

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1 concoct the story of mine in which this hypothetical 10:58:26
2 individual was actually harmed by the -- by the 10:58:27
3 conspiracy, and I'm not -- even though I probably 10:58:27
4 shouldn't, and I gave you an example. 10:58:32

5 BY MR. PICKETT: 10:58:37

6 Q. How would it work that her Microsoft salary 10:58:38
7 would have been impacted? 10:58:42

8 MR. GLACKIN: Objection, incomplete 10:58:47
9 hypothetical, calls for speculation, foundation. 10:58:49

10 THE WITNESS: Well, if we thought of there 10:58:52
11 being a specific skill category, and suppose there's 10:58:54
12 an increase in demand for this skill category, so 10:58:58
13 the new equilibrium price is going to be a higher 10:59:03
14 price. 10:59:08

15 This sequence of transactions in search of 10:59:08
16 that equilibrium and those transactions are 10:59:13
17 occurring among the defendants, but they are 10:59:13
18 occurring with the non-defendants as well. So those 10:59:15
19 Microsoft employees are also being impaired by the 10:59:17
20 information -- by the limited information flow. 10:59:22

21 BY MR. PICKETT: 10:59:25

22 Q. Isn't it the case that the Microsoft 10:59:25
23 employees would be getting more cold calls because 10:59:27
24 of the restrictions on cold calling within the 10:59:30
25 bilateral agreement? 10:59:34

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1	Q.	67.	11:17:25
2	A.	Okay. Yes.	11:17:34
7	Q.	So the college graduate who applied to a	11:17:43
8		bunch of schools and -- sorry, applied to a bunch of	11:17:45
9		companies and got a particular job, he or she also	11:17:47
11	A.	That's not correct. Meaning that the age	11:17:56
12		variable and the equation allows to you distinguish	11:18:00
25	THE WITNESS:	The word "technical employee	11:18:49

HIGHLY CONFIDENTIAL

1	class" was provided by counsel.	11:18:51
2	BY MR. PICKETT:	11:18:54
3	Q. Well, the definition of it was also	11:18:54
4	provided. "All natural persons employed on a salary	11:18:57
5	basis who work in the creative, research &	11:19:02
6	development, and/or technical fields"?	11:19:05
7	MR. GLACKIN: So just -- you're reading a	11:19:07
8	different page than the page you directed him to.	11:19:08
9	MR. PICKETT: No, I'm -- actually, it's	11:19:12
10	right there.	11:19:12
11	MR. GLACKIN: Okay.	11:19:15
12	THE WITNESS: On page 74?	11:19:15
13	BY MR. PICKETT:	11:19:16
14	Q. Yes.	11:19:16
15	A. It says, "I was asked to identify employees	11:19:16
16	that fit with in Technical Employee Class."	11:19:19
17	Q. "Defined to include all full-time salaried	11:19:21
18	employees of Defendants during the period of the	11:19:21
19	alleged agreements that worked in technical,	11:19:21
20	creative, and research & development positions."	11:19:28
21	A. Correct.	11:19:30
22	Q. You were provided that definition by the	11:19:32
23	plaintiff's counsel?	11:19:34
24	A. Correct.	11:19:34
25	Q. It took a long time to get there.	11:19:35

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1	MR. GLACKIN: Objection, I'm going to	11:20:35
2	instruct him not to answer to the extent it goes to	11:20:36
3	draft or preliminary work or communications with	11:20:39
4	counsel. But if you can answer without talking	11:20:42
5	about those things, fine.	11:20:44
6	THE WITNESS: This thing was a process, so	11:20:47
7	it wouldn't surprise me if that was the case, but we	11:20:51
8	don't take special note about it. We looked at	11:20:54
9	volumes of -- should we include marketing? We asked	11:20:58
10	that question. That's as if to say they are	11:21:00
11	included. And then the decision was to say, no,	11:21:03
12	let's not include marketing, that's not what we --	11:21:05
13	(Inaudible mumbling.)	11:21:08
14	BY MR. PICKETT:	11:21:08
15	Q. Now -- (Cross-talking.)	11:21:08
16	A. In that sense, everyone that is not in the	11:21:08
17	technical class was, in a sense, explicitly removed	11:21:10
18	from the technical class.	11:21:15
19	Q. Were the six bilateral agreements that you	11:21:17
20	identify in figure 1, page 9, if you want to look at	11:21:25
21	it, but we looked at this before -- were the -- was	11:21:29
22	the scope of agreements limited to persons who	11:21:34
23	worked in technical, creative, and research &	11:21:39
24	development positions?	11:21:42
25	A. Decidedly not.	11:21:44

HIGHLY CONFIDENTIAL

1	Q. So is there any basis on the fact to limit	11:21:45
2	this class to this definition?	11:21:47
3	MR. GLACKIN: Objection, vague and	11:21:51
4	ambiguous, calls for a legal conclusion, calls for	11:21:52
5	speculation.	11:21:54
6	THE WITNESS: Are you asking me as an	11:21:58
7	economist --	11:22:01
8	BY MR. PICKETT:	11:22:02
9	Q. Yes.	11:22:02
10	A. -- if I can think up reasons?	11:22:02
11	Q. Sure.	11:22:05
12	A. Well, you want a class that is being	11:22:06
13	effected by the agreements. You want to make sure	11:22:07
14	that all or most members of the class are affected.	11:22:11
15	So you might hypothesize that the technical or	11:22:14
16	smaller group than the whole set of employees might	11:22:19
17	be an appropriate class.	11:22:21
18	Q. Why?	11:22:23
19	A. Because you might hypothesize that those	11:22:24
20	are the ones that are most susceptible to the cold	11:22:26
21	calling.	11:22:32
22	Q. Well, did you find that to be true in	11:22:33
23	fact?	11:22:36
24	A. Well, let me put it this way, I have not	11:22:36
25	found any evidence that would suggest this sharing	11:22:37

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1	of rewards is limited to a technical class. So if	11:22:40
2	you ask me, what we ought to be using is the	11:22:47
3	whole -- the whole salary database.	11:22:49
4	But I wasn't asked to explore that, so I	11:22:52
5	just sort of kind of have a casual opinion about it,	11:22:56
6	but not a well-thought out opinion.	11:22:58
7	Q. You spent hundreds of hours on this	11:23:01
8	project, right?	11:23:04
9	A. But not on this question.	11:23:05
10	Q. But have you seen anything that would	11:23:06
11	suggest it's appropriately limited?	11:23:07
12	A. I have not seen anything to suggest that	11:23:10
13	the broader class is inappropriate, but I wasn't	11:23:12
14	asked to explore that. But in the course of	11:23:14
15	carrying out the task that I carried out, nothing	11:23:17
16	popped out as suggesting that the broader class was	11:23:21
17	inappropriate.	11:23:24
18	Q. Or suggest that a narrower class is more	11:23:26
19	appropriate?	11:23:33
20	A. I take that to be the same statement.	11:23:33
21	Q. Let me ask you to look at figure 1 on page	11:23:36
22	9. These are the six key bilateral agreements on	11:23:39
23	which you base your study?	11:23:51
24	A. That's correct.	11:23:58
25	Q. You agree that there's no agreement to	11:23:58

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1	Q. Look at the bottom of the page of the text.	12:12:39
2	It says, "Each defendant had a rigid salary	12:12:45
3	structure," correct?	12:12:47
4	A. It says that, but the first sentence says	12:12:50
5	"somewhat rigid salary structure."	12:12:53
6	Q. So what's your opinion?	12:12:54
7	A. Well, I think if -- if "rigid," you mean	12:12:56
8	absolutely rigid, no.	12:12:59
9	Q. What -- well, one time you said "somewhat	12:13:02
10	rigid," in the same very paragraph you said "rigid."	12:13:05
11	A. I suggest it's somewhat --	12:13:10
12	Q. Which did --	12:13:10
13	MR. GLACKIN: Why don't you -- why don't	12:13:10
14	you let him finish his question.	12:13:10
15	BY MR. PICKETT:	12:13:13
16	Q. Which did you mean?	12:13:13
17	A. I mean somewhat rigid.	12:13:14
18	Q. Okay. And by that -- so I should insert	12:13:17
19	the word "somewhat" at the bottom of that page?	12:13:20
20	MR. GLACKIN: Objection, argumentative,	12:13:24
21	asked and answered.	12:13:25
22	THE WITNESS: That would be helpful.	12:13:27
23	BY MR. PICKETT:	12:13:31
24	Q. Okay. And when you state now that "Each	12:13:31
25	defendant had a somewhat rigid salary structure,"	12:13:33

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1	MR. GLACKIN: Objection,	12:19:07
2	mischaracterizes.	12:19:08
3	THE WITNESS: I didn't perform a	12:19:10
4	statistical test, but it's sort of embodied in our	12:19:13
5	comparison at Figure 11 versus Figure 12.	12:19:15
6	BY MR. PICKETT:	12:19:20
7	Q. How?	12:19:20
8	A. Well, the Figure 12 is a reference to a	12:19:21
9	completely disaggregated examination of data on a	12:19:26
10	defendant-by-defendant basis. And the test would be	12:19:30
11	to compare the R squares that are reported on Figure	12:19:34
12	12 with the R squares that are reported in Figure	12:19:37
13	11.	12:19:42
14	Q. And what did -- did you do that?	12:19:43
15	A. No, I didn't carry it out. I said it's	12:19:44
16	embodied in those -- in those differences.	12:19:46
17	Q. How much of the R squared is carried by	12:19:49
18	age, gender, and tenure?	12:19:54
19	A. I don't know off the top of my head. It	12:19:58
20	wouldn't surprise me that the title indicators are	12:19:59
21	very important here, by the way. And probably more	12:20:04
22	important than employer indicators.	12:20:07
23	Q. Would it surprise you that the title	12:20:09
24	indicators govern the vast majority?	12:20:09
25	A. No, that wouldn't surprise me.	12:20:09

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1	Q. Ask you to turn to page -- paragraph 64,	12:20:28
2	which is page 29. Well, the part of it I'd like to	12:20:33
3	point you to is on page 29.	12:20:44
4	So in that paragraph you're talking about	12:20:48
5	common proof and "B" states, "Additional evidence	12:20:55
6	that compensation of employees tended to move	12:20:57
7	together over time, such as the effects of	12:21:00
8	noncompete agreements are likely to be broadly	12:21:05
9	felt." Do you see that?	12:21:07
10	A. I do see that.	12:21:08
11	Q. So you felt the need to test whether the	12:21:11
12	compensation of employees tended to move together	12:21:14
13	over time, right?	12:21:18
14	A. Within firms, by the way.	12:21:21
15	Q. You mean on an individual	12:21:25
16	defendant-by-defendant basis?	12:21:27
17	A. Correct.	12:21:29
18	Q. Only that?	12:21:31
19	A. The sharing's about internal equity, it's	12:21:33
20	not about cross-firm consideration. So it's really	12:21:35
21	about what's happening inside the firms.	12:21:39
22	Q. So only that, correct? Only within a	12:21:43
23	single entity?	12:21:53
24	A. Correct. That's a reference. It doesn't	12:21:55
25	mean that there isn't coordination of salary	12:21:57

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1	percent in each year, must compensation move	12:33:59
2	together across groups?	12:34:02
3	A. Well, to the extent that's the same	12:34:05
4	coefficients on a year-by-year basis, the answer is	12:34:07
5	yes.	12:34:10
6	Q. Now, do the regressions look at changes in	12:34:13
7	compensation over time?	12:34:17
8	A. No, they do not.	12:34:21
9	Q. You ran the regressions separately year by	12:34:23
10	year, right?	12:34:26
11	A. That's correct.	12:34:26
12	Q. And you didn't attempt to correlate years,	12:34:27
13	correct?	12:34:33
14	A. What's being reported here doesn't make a	12:34:33
15	reference to intertemporal comparisons.	12:34:35
16	Q. And -- and you didn't attempt to correlate	12:34:40
17	between different job titles, did you?	12:34:42
18	MR. GLACKIN: Objection, vague.	12:34:50
19	THE WITNESS: I don't know what you mean by	12:34:58
20	"correlate between different job titles."	12:35:00
21	BY MR. PICKETT:	12:35:03
22	Q. You didn't put in data job title by job	12:35:03
23	title?	12:35:07
24	A. Well, there are title indicators in here,	12:35:07
25	you don't mean that. So what is it that you --	12:35:09

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1	Q. Compensation on a job-title-by-job-title	12:52:34
2	basis.	12:52:36
3	A. And so the additional stuff that we haven't	12:52:38
4	discussed here is to look at the -- the compensation	12:52:41
5	5 title over time. 'Cause you're quite right, if	12:52:44
6	there were major changes in those title	12:52:50
7	compensation, then these equations are going to	12:52:51
8	disguise -- they're going to look like there isn't	12:52:56
9	change, when there is big change. You got me that?	12:52:59
10	Q. Yes.	12:53:02
11	A. So you've got to worry about the	12:53:03
12	variability in those coefficients, and you've got	12:53:03
13	the sequence of data displays that -- that show you	12:53:07
14	the Figure 15, Figure 16.	12:53:13
15	Q. I'll get to those right after lunch, but --	12:53:20
16	A. Okay.	12:53:22
17	Q. -- let's stay on the regression analysis.	12:53:22
18	A. So you were asking me about title, so these	12:53:25
19	are the -- this is what we did with regard to	12:53:27
20	variability and titles.	12:53:29
21	Q. Okay. But the regression analyses	12:53:31
22	reflected in Figures 11, 12, 13, and 14, don't tell	12:53:32
23	you whether salaries of two employees with two	12:53:39
24	different job titles are correlated with each other	12:53:41
25	over time, correct?	12:53:45

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1	A. That's correct. And that's why we did	12:53:46
2	Figure 15 and 16.	12:53:47
3	MR. PICKETT: Okay. Why don't we take a	12:53:49
4	break on that note?	12:53:50
5	THE VIDEOGRAPHER: We are off the record.	12:53:52
6	The time is 12:54.	12:53:53
7	(Lunch recess taken.)	12:53:54
8	THE VIDEOGRAPHER: This is Disk 5 for	12:53:54
9	Edward Leamer. We're back on the record at 1:36.	13:36:50
10	THE WITNESS: I'm putting them there, so.	13:36:53
11	MR. GLACKIN: Same -- if you can turn to	13:36:55
12	Figure 12.	13:37:00
13	THE WITNESS: Okay.	13:37:02
14	BY MR. PICKETT:	13:37:11
15	So let me go back to the wage suppression	13:37:11
16	regressions for just a moment. I want you to take a	13:37:14
17	look, please, at Figure 12 on page 56, which has the	13:37:19
18	R squares year by year for the seven defendants.	13:37:23
19	And I think you'll agree that these show the levels	13:37:29
20	of compensation at each year, but they don't show	13:37:31
21	the changes of compensation over time, right?	13:37:36
22	A. That's correct.	13:37:38
23	Q. Did you look at what the R squares will be,	13:37:39
24	if you used data showing changes in compensation	13:37:44
25	over the years?	13:37:47

1	shown for total compensation was, to use your word,	14:13:24
2	a "mish-mash," how would that affect your opinion?	14:13:27
3	A. It would mean that these regressions	14:13:31
4	wouldn't -- wouldn't speak to the point. It doesn't	14:13:33
5	alter the fact that there is wage sharing, because	14:13:36
6	there's ample documentary evidence and there's ample	14:13:40
7	conceptual theory to support the idea that some form	14:13:45
8	of wage sharing is going on, but that it somehow was	14:13:47
9	being disguised and not -- not evident in these	14:13:47
10	particular diagrams. Although, if I found that, you	14:13:47
11	can be sure I'd be thinking of other ways of	14:13:59
12	creating displays that would reveal the wage sharing	14:14:01
13	that was actually going on, even though these might	14:14:04
14	not.	14:14:05
15	Q. How much time did it take you to look at	14:14:06
16	the total compensation chart under Figure 16 and	14:14:08
17	conclude that these lines were very substantially	14:14:15
18	parallel?	14:14:17
19	A. I'm -- I'm attempted to be playful, but	14:14:19
20	I've been told not to. When Picasso was asked how	14:14:21
21	long it took him to draw his most recent painting,	14:14:25
22	he said all his life. Which to some extent is what	14:14:28
23	seems to me to be applicable. Not just take a look	14:14:31
24	at it, it's the whole experience that I've built up	14:14:34
25	in studying data sets and drawing conclusions from	14:14:37

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1	MR. PICKETT: -- among job titles?	14:26:59
2	MR. GLACKIN: Objection,	14:27:01
3	mischaracterizes.	14:27:01
4	THE WITNESS: I didn't understand that.	14:27:02
5	BY MR. PICKETT:	14:27:04
6	Q. Is there a difference to internal equity --	14:27:04
7	A. Yes.	14:27:07
8	Q. -- that would result in differences in	14:27:07
9	payment of compensation across job titles?	14:27:09
10	MR. GLACKIN: Objection, incomplete.	14:27:12
11	THE WITNESS: You mean in a given year	14:27:17
12	there are differences in --	14:27:18
13	BY MR. PICKETT:	14:27:19
14	Q. Over time, as you've graphed them on your	14:27:19
15	own charts.	14:27:22
16	A. Yeah, they -- they -- the -- the nonrigid	14:27:24
17	compensation would be evidenced by, say -- let's	14:27:26
18	say, a big bump up in base salary or total	14:27:31
19	compensation for a particular job title that left	14:27:35
20	that particular job title in a new position	14:27:38
21	indefinitely, that didn't get corrected by -- by	14:27:40
22	internal realignments of compensation.	14:27:46
23	Q. Could a nonrigid wage structure, as you've	14:27:48
24	defined it, lead to parallel lines?	14:27:50
25	A. Yes, it could.	14:27:52

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1	A. If it didn't raise an internal --	14:29:02
2	Q. I'm talking about a defendant as you have	14:29:02
3	studied them.	14:29:03
4	A. Yes. Are you -- are you hypothesizing that	14:29:04
5	there's a hiring -- hiring from an outside firm that	14:29:08
6	is incompatible with the wage structure that doesn't	14:29:13
7	generate internal equity concerns, in which case	14:29:15
8	there wouldn't be a response? And my answer is,	14:29:20
9	yes, you could have somebody who is exceptionally a	14:29:22
10	creative individual, and everybody in the firm is	14:29:25
11	happy to get that person with them, and they would	14:29:27
12	think that person completely deserves whatever	14:29:31
13	compensation they receive, and that would be a kind	14:29:33
14	of hiring that would not necessarily produce the	14:29:35
15	internal equity considerations that I think are to	14:29:39
16	be applicable to almost all hiring otherwise.	14:29:43
17	Q. Right. Now, internal -- it's internal	14:29:45
18	equity, it's not internal equality, correct?	14:29:47
19	A. That's correct.	14:29:49
20	Q. So you could distinguish pay within any job	14:29:50
21	title based on performance, experience, lots of	14:29:53
22	other different characteristics, true?	14:29:57
23	A. Yeah, there's some scope to variability of	14:30:01
24	compensation based on performance within this	14:30:04
25	somewhat rigid salary structure.	14:30:07

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1	internal equity is -- is an important consideration	14:55:28
2	in the compensation setting, it's sufficiently clear	14:55:32
3	and well understood that there are very few firms	14:55:35
4	who can ignore that completely.	14:55:39
5	Q. Did you see any evidence that any of the	14:55:41
6	seven did?	14:55:42
7	A. Ignored internal equity? No, I didn't see	14:55:44
8	any evidence that internal equity was ignored.	14:55:46
9	Q. And --	14:55:47
10	A. A case in point, again, poster -- poster	14:55:47
11	child is that Google across the board	14:55:51
12	compensation.	14:55:56
13	Q. Does internal equity extend beyond	14:55:56
14	individual job titles?	14:56:00
15	MR. GLACKIN: Objection, vague.	14:56:02
16	THE WITNESS: Well, this is the reaction on	14:56:03
17	a part of the work force. So if you -- suppose	14:56:05
18	you're in a job title and somebody comes in with a	14:56:06
19	super high compensation. The question is, is that a	14:56:11
20	violation of internal equity. That's a judgment on	14:56:13
21	the part of the worker there. It may be that this	14:56:16
22	person that's been hired is so productive, and so	14:56:18
23	creative, and we're all going to benefit from the	14:56:21
24	fact that that worker is there, then there isn't any	14:56:23
25	qu -- internal equity problem.	14:56:25

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1	MR. PICKETT: I want answers to all my	16:36:43
2	questions. You're the one instructing.	16:36:45
3	MR. GLACKIN: I'm understanding you to say	16:36:49
4	that you think that that answer is not useful to you	16:36:51
5	unless you can ask follow-up questions that --	16:36:53
6	(Cross-talking.)	16:36:55
7	MR. PICKETT: That's not what I said at	16:36:55
8	all. That's not what I said at all.	16:36:56
9	Q. Go ahead, answer your question. Please go	16:36:56
10	ahead.	16:36:59
11	A. You want an example -- (Cross-talking.)	16:36:59
12	Q. I want all dimensions.	16:37:01
13	A. I can't report all because I don't have all	16:37:03
14	of them in front of me.	16:37:05
15	Q. All that you recall.	16:37:06
16	A. Well, I recall one which has to do with	16:37:07
17	disaggregation with data by a defendant. So I have	16:37:14
18	a model that has all the defendants --	16:37:17
19	MR. GLACKIN: Wait, wait, wait, wait, I'm	16:37:19
20	going to instruct you not to answer further.	16:37:22
21	THE WITNESS: Okay.	16:37:25
22	BY MR. PICKETT:	16:37:31
23	Q. What were the results of the	16:37:31
24	disaggregation?	16:37:32
25	MR. GLACKIN: If you answer something other	16:37:36

1	than "I don't know," or "I don't remember," I'm	16:37:37
2	going to instruct you not to answer.	16:37:40
3	THE WITNESS: I don't remember the	16:37:40
4	details.	16:37:40
5	BY MR. PICKETT:	16:37:41
6	Q. Did you retain that work?	16:37:41
7	A. Well, I don't know what you mean by	16:37:42
8	retention, but a model like that probably sits on --	16:37:45
9	in my hard dive somewhere I suppose.	16:37:48
10	Q. Does Econ One have any data associated with	16:37:51
11	that analysis -- the disaggregation analysis?	16:37:54
12	A. Well, it's not hard to do. Your experts	16:38:00
13	will be able to do it with a press of a button. So	16:38:02
14	that's not something that has to be produced in	16:38:07
15	order to do it.	16:38:08
16	Q. Could you answer the question, please?	16:38:09
17	A. I don't know what's on Econ One	16:38:10
18	computers.	16:38:13
19	Q. But you have something on your hard drive	16:38:13
20	that you haven't produced to us related to the	16:38:15
21	disaggregation?	16:38:17
22	A. I don't know that that's the case. I could	16:38:19
23	tell you it was on the hard drive once. But whether	16:38:21
24	I retained it or not, I can't tell.	16:38:23
25	Q. So you could have deleted it, you could	16:38:25

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1	Q. The individual's --	17:30:52
2	A. -- depends on the number of new hires. But	17:30:53
3	it's a very -- it's a model that describes an	17:30:56
4	individual, not the firm. So you'd have to carry	17:30:59
5	out this exercise -- if you're interested in Adobe,	17:31:02
6	you'd have to carry out the exercise with regard to	17:31:03
7	all employees at Adobe, allowing for the different	17:31:05
8	ages, and tenure, and etc.	17:31:08
9	Q. To -- to find individual impact?	17:31:11
10	A. I -- I think that that's a	17:31:14
11	misinterpretation. It's rather -- you aggregate	17:31:15
12	that then to the level of the firm by summing up	17:31:18
13	over all Adobe employees, and that estimate is an	17:31:22
14	estimate that is corrected for the age competition	17:31:25
15	of an employee of the Adobe workforce.	17:31:28
16	Q. And the only two variables within a company	17:31:30
17	that make a difference are age and number of new	17:31:33
18	hires?	17:31:38
19	A. Correct. Those are the only two that drive	17:31:38
20	the conduct variable.	17:31:45
21	Q. Now, this is an aggregated regression,	17:31:48
22	correct? Not disaggregated by company?	17:31:50
23	A. Well, this is individual data.	17:31:55
24	Q. The analysis is not disaggregated, it's	17:31:57
25	aggregated, correct?	17:31:58

HIGHLY CONFIDENTIAL

1	MR. GLACKIN: Objection, vague,	17:32:01
2	mischaracterizes.	17:32:02
3	THE WITNESS: Well, the data from all firms	17:32:03
4	are included in the estimation process.	17:32:06
5	BY MR. PICKETT:	17:32:08
6	Q. All right. Let me go back. You did run a	17:32:08
7	disaggregation analysis, correct?	17:32:09
8	A. Yeah, that's what I just said. I mean,	17:32:13
9	maybe I ought to repeat what I said, which is this	17:32:15
10	regression is not disaggregated, in the sense that	17:32:17
11	includes observation from all firms.	17:32:22
12	Q. Correct.	17:32:26
13	A. Although, it does have variables that	17:32:26
14	describe differences among the firms.	17:32:29
15	Q. It describes data from all firms,	17:32:31
16	correct?	17:32:34
17	A. It uses the input data from all firms.	17:32:34
18	Q. So it is not disaggregated firm by firm by	17:32:37
19	firm?	17:32:39
20	A. If you use the word "disaggregation" to	17:32:40
21	refer to estimating the same equation on subsets of	17:32:45
22	the data on a firm-by-firm basis, that's not what	17:32:47
23	this is.	17:32:49
24	Q. And the result you get is aggregated,	17:32:52
25	true?	17:32:57

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1	MR. GLACKIN: Objection, mischaracterizes.	17:34:17
2	THE WITNESS: Well, I'm tired here. The	17:34:56
3	answer is that's what the model says, but then	17:35:00
4	you're raising another question, which is, is the	17:35:03
5	model compatible with the -- the set of	17:35:05
6	opportunities.	17:35:08
7	MR. PICKETT: Right.	17:35:10
8	THE WITNESS: And in my tired state, I	17:35:11
9	can't produce a story that would justify that.	17:35:17
10	BY MR. PICKETT:	17:35:21
11	Q. Why does compensation depend on the number	17:35:21
12	of new hires at all defendants? Why wouldn't it	17:35:23
13	depend on the number of new hires total, including	17:35:27
14	the nondefendants?	17:35:30
15	A. Where -- are you talking about row 3?	17:35:34
16	Q. Correct.	17:35:35
17	A. Well, row 3 is telling you that -- it's	17:35:36
18	identifying the firms that are going to be most	17:35:39
19	affected by the cold calling and the anti-cold	17:35:42
20	calling agreements. It's those firms that would	17:35:47
21	have been -- that were hiring substantially who	17:35:50
22	probably would have been doing a cold calling. So	17:35:52
23	you raise another possibility, that it could be --	17:35:55
24	another variable you might explore is the number of	17:35:58
25	new hires in total --	17:36:01

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1	Q. What do you mean by, "substantial number of	18:38:15
2	employees"?	18:38:16
3	A. Well, footnote 129 says -- in referencing	18:38:23
4	this Google document it indicates, "Our research	18:38:28
5	indicates that Google continues to be one of the top	18:38:30
6	organizations targeted by Facebook recruiting	18:38:34
7	efforts. We estimate 20 percent of new Facebook	18:38:36
8	employees in 2010 were recruited from Google."	18:38:39
9	Q. SO, does the effect of cold calling on	18:38:42
10	compensation firm-wide depend on substantial	18:38:44
11	recruiting from a competitor?	18:38:47
12	A. Does the effect of cold calling -- could	18:38:57
13	you repeat that sentence? I can't quite	18:39:00
14	interpret --	18:39:03
15	Q. Sure. You talk about a firm-wide increase	18:39:05
16	in compensation of 10 percent at Google, right?	18:39:08
17	A. That's correct.	18:39:10
18	Q. And that was a response to the fact that	18:39:11
19	there was substantial recruiting here, 20 percent of	18:39:13
20	the new employees being recruited from a single	18:39:17
21	employer?	18:39:20
22	A. Correct.	18:39:21
23	Q. And so you'd agree with me that the	18:39:21
24	circumstance of the substantial recruiting, Facebook	18:39:26
25	targeting Google, had an impact or Google's decision	18:39:33

1 to increase its compensation across the board? 18:39:37
2 A. Correct. 18:39:41
[REDACTED] [REDACTED]
18 Q. Why not? Why didn't they? 18:40:35
19 MR. GLACKIN: Objection, lack of 18:40:36
20 foundation, calls for speculation. 18:40:38
21 THE WITNESS: I agree with that, too. It's 18:40:43
22 not something that I studied. 18:40:45
23 BY MR. PICKETT: 18:40:46
24 Q. So you don't know one way or the other? 18:40:46
25 A. I haven't studied that issue. 18:40:49

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1	A. Correct.	18:43:47
2	Q. Some may get zero percent, some may get	18:43:48
3	double --	18:43:50
4	A. Correct.	18:43:50
5	Q. -- the target, correct?	18:43:50
6	A. Yeah.	18:43:51
7	Q. So this is unique. This went 10 percent to	18:43:52
8	everybody, correct?	18:43:55
9	MR. GLACKIN: Objection --	18:43:57
10	MR. PICKETT: The Google --	18:43:58
11	MR. GLACKIN: -- compound.	18:43:58
12	THE WITNESS: I mean, yeah, in the absence	18:43:59
13	of 10 percent. This is unusual and unique.	18:43:59
14	BY MR. PICKETT:	18:44:03
15	Q. So only across -- the only strictly	18:44:03
16	across-the-board raise was this one by Google in	18:44:04
17	response to Facebook?	18:44:08
18	A. That's correct.	18:44:09
23	Q. Now, let me ask you to look at a Google	18:44:22
24	exhibit that you cite. It's -- we'll call it	18:44:30
25	Exhibit 88. It's G-O-O-G, High-Tech 00193217. It's	18:44:35

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1	decisions based on internal equity is fraud; is that	18:52:27
2	your testimony?	18:52:31
3	A. I don't know who the author is, is my	18:52:31
4	testimony. I agree that this apparently is a	18:52:32
5	statement about why internal equity is a fraud	18:52:34
6	method in making pay decisions.	18:52:39
7	Q. Right.	18:52:42
8	A. But I don't know the materiality of that --	18:52:42
9	of this document.	18:52:43
10	Q. And do you agree that one could conclude	18:52:47
11	that internal equity is not an appropriate concept	18:52:51
12	to follow based on the three reasons listed under A,	18:52:54
13	B, C?	18:52:57
14	A. I completely don't agree with that.	18:52:58
15	Q. Why not?	18:53:00
16	A. Because there's reasons for internal	18:53:01
17	equity. There are reasons why you don't want to	18:53:03
18	have it, and you've got three of them. But there	18:53:04
19	are reasons to have internal equity as well.	18:53:08
20	Q. And couldn't you -- I'm sorry, go ahead.	18:53:10
21	A. You've got to weigh one with the other.	18:53:11
22	Q. Couldn't a rational firm conclude that it	18:53:13
23	wasn't going to follow internal equity. Rather, it	18:53:16
24	would take into consideration the natural variance	18:53:18
25	of employees? It would take into account the	18:53:20

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1	philosophy paid for performance and it would look to	18:53:26
2	external marketing conditions. Would that be	18:53:30
3	rational?	18:53:33
4	A. And let's add "E" or "D" in place, which is	18:53:34
5	it would ignore the discomfort that would be caused	18:53:36
6	by employees who were left behind in this pay	18:53:36
7	scheme. And that might all -- it might affect their	18:53:40
8	productivity. That's the whole point of internal	18:53:44
9	equity.	18:53:47
10	Q. If this was --	18:53:47
11	A. This lists the reasons why internal equity	18:53:47
12	is not a good idea, but there's a list of reasons	18:53:49
13	why internal equity considerations is a good idea.	18:53:51
14	You have to really wonder if there's the other.	18:53:57
15	Q. If this were, in fact, Intuit's policy,	18:53:59
16	would it make a difference to your opinion?	18:54:01
17	A. It would make Intel less likely to have the	18:54:05
18	impact of anti-cold calling agreements spread across	18:54:10
19	all members of the firm.	18:54:15
20	Q. Intuit --	18:54:19
21	A. Spreading -- yeah. Because the spreading	18:54:20
22	is due to the internal equity considerations.	18:54:20
23	MR. PICKETT: I've got maybe -- well, I	18:54:25
24	might make 7:00, I might make 7:03. We're very	18:54:31
25	close.	18:54:33

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1 determines who gets paid twice as much as somebody 18:55:40
2 else, that's not up to the individual manager. 18:55:43
3 That's -- that's top level management deciding to 18:55:45
4 structure salaries across grades. 18:55:50

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11 A. That's correct. 18:56:28

12 MR. PICKETT: Let me mark that as Exhibit 18:56:29
13 89. 18:56:56

14 (Exhibit 89 marked for identification.) 18:56:56

15 BY MR. PICKETT: 18:56:56

16 Q. This is a document you relied upon? 18:56:56

17 A. That's correct. 18:56:59

18 Q. If you'll turn, please, to slide 24, Bates 18:57:00
19 numbers ending 661. 18:57:05

20 A. Yes. 18:57:07

[REDACTED]

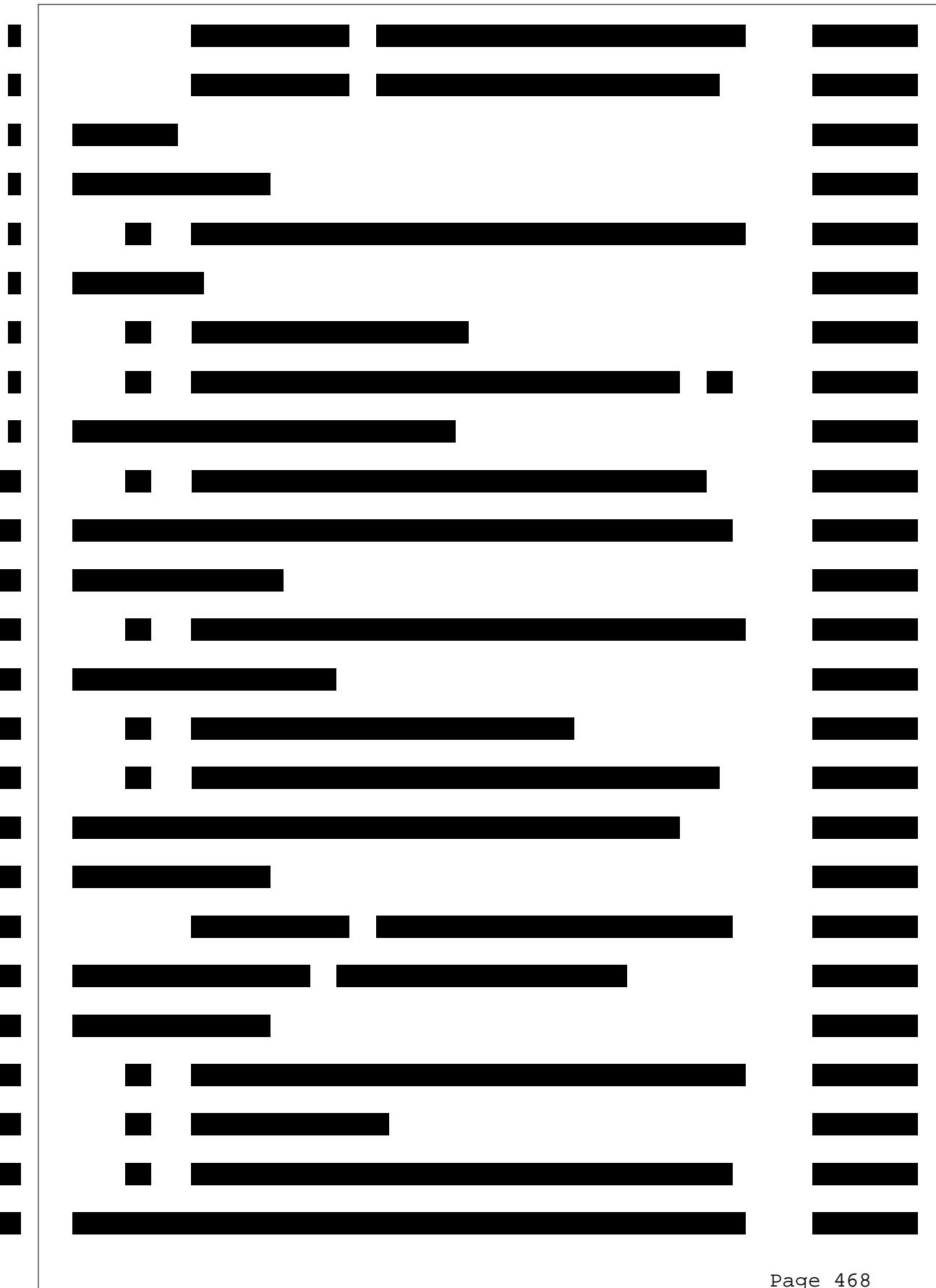
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[REDACTED]

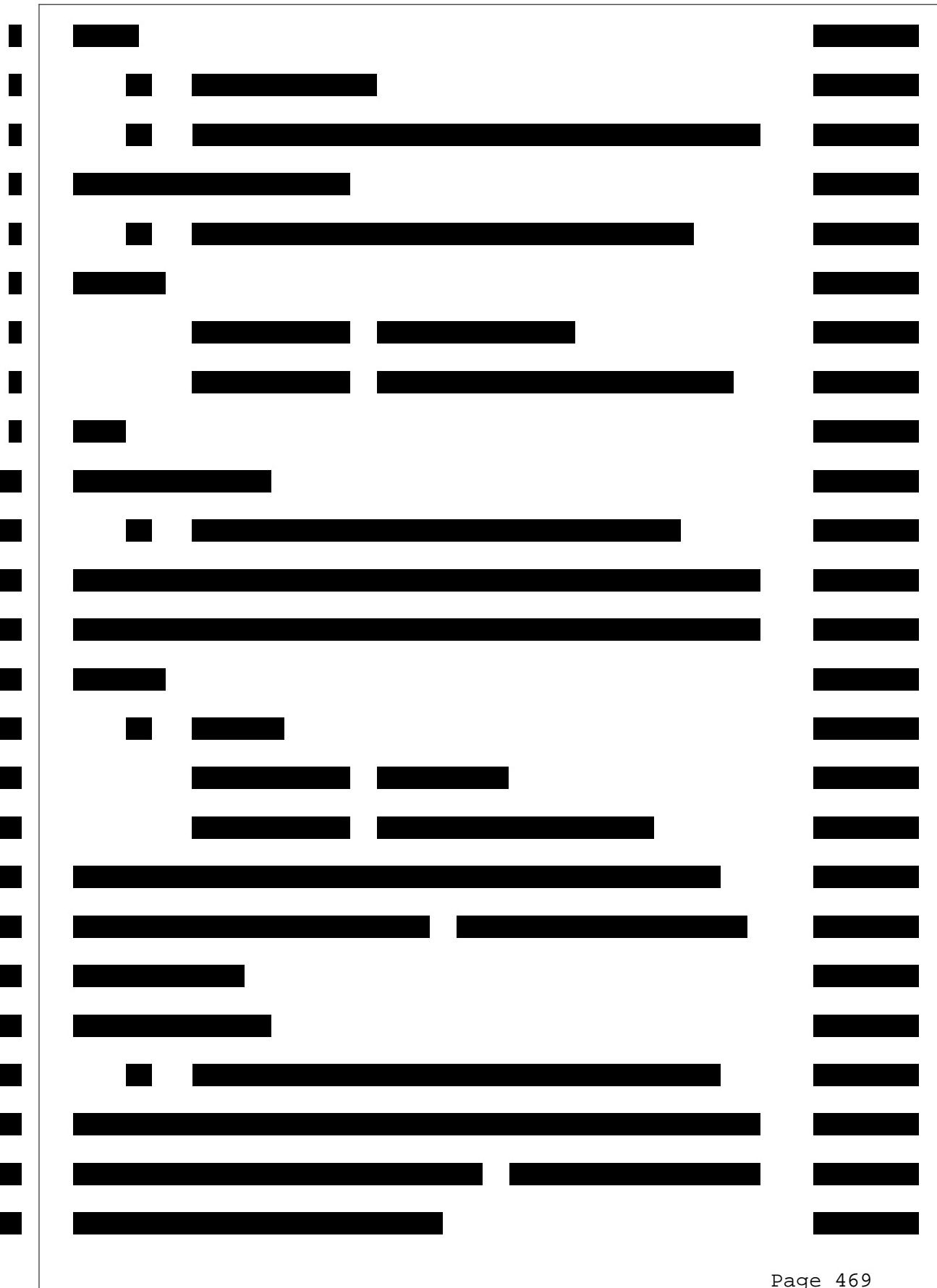
[REDACTED]

[REDACTED]

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1	MR. GLACKIN: Objection, foundation.	18:58:52
2	THE WITNESS: Well, I think that perhaps	18:58:58
3	"relatively little" is an overstatement.	18:59:01
4	BY MR. PICKETT:	18:59:06
5	Q. All right. Let's go to the last couple of	18:59:06
6	questions.	18:59:08
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED] [REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED] [REDACTED]	[REDACTED]
	[REDACTED] [REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED] [REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED] [REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
22	Q. And if you look at Figure 22, one follow-up	18:59:45
23	question on that. At page -- at page 67.	18:59:49
24	A. Yes.	19:00:04
25	Q. Is the undercompensation percentages	19:00:05

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1	equilibrium or not?	19:01:15
2	MR. GLACKIN: Objection, misstates the	19:01:16
3	testimony.	19:01:16
4	THE WITNESS: Well, I've tried to indicate	19:01:19
5	that the right way to think about it is if these	19:01:24
6	transactions are in search of a market equilibrium,	19:01:27
7	then all of the transactions are occurring outside	19:01:30
8	of market equilibrium levels.	19:01:33
9	BY MR. PICKETT:	19:01:35
10	Q. So -- so what is the compensation relative	19:01:35
11	to?	19:01:39
12	MR. GLACKIN: Objection, asked and	19:01:39
13	answered.	19:01:39
14	THE WITNESS: I told you that.	19:01:40
15	BY MR. PICKETT:	19:01:41
16	Q. It's not a market equilibrium, what is it?	19:01:41
17	A. It's -- it's the -- there are two sequences	19:01:43
18	of prices in search of the market equilibrium. One	19:01:45
19	sequence of prices go rapidly to the market	19:01:48
20	equilibrium, another sequence of prices go slowly to	19:01:52
21	market equilibrium. And the gap between those is	19:01:55
22	the -- is what is being reported here.	19:01:57
23	Q. If your conduct regressions came up with a	19:02:01
24	positive conduct coefficient, what would that tell	19:02:04
25	you about the model?	19:02:06

1	A. Well, it would raise concerns about the	19:02:07
2	model.	19:02:09
3	Q. In what way?	19:02:09
4	A. The conceptual framework and the	19:02:10
5	appropriateness of the model. These things depend	19:02:13
6	upon the control variables that we have in the	19:02:16
7	equation. There's no question about that.	19:02:19
8	Q. So you're confident that your regression --	19:02:20
9	your conduct regression does not result in a	19:02:22
10	positive conduct coefficient?	19:02:24
11	A. Well, that's for sure. This regression	19:02:26
12	doesn't have a positive conduct regression.	19:02:30
13	MR. GLACKIN: We're done?	19:02:34
14	MR. PICKETT: That's it for now.	19:02:35
15	MR. GLACKIN: Wow.	19:02:40
16	MR. HINMAN: I just want to put on -- okay,	19:02:40
17	I'm going to put on the record that I think we have	19:02:41
18	some disagreement and we each request to reserve our	19:02:42
19	right with respect to the interpretation of the	19:02:45
20	stipulation and perhaps some of the instructions	19:02:47
21	that were given based on that.	19:02:48
22	MR. GLACKIN: Okay. That's fine. I	19:02:50
23	understand. But putting that issue aside, we're	19:02:51
24	done.	19:02:55
25	MR. PICKETT: Well, if I had more time, I'd	19:02:56

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1 STATE OF CALIFORNIA) ss:

2 COUNTY OF MARIN)

3

4 I, ASHLEY SOEVYN, CSR No. 12019, do hereby
5 certify:

6 That the foregoing deposition testimony was
7 taken before me at the time and place therein set
8 forth and at which time the witness was administered
9 the oath;

10 That the testimony of the witness and all
11 objections made by counsel at the time of the
12 examination were recorded stenographically by me,
13 and were thereafter transcribed under my direction
14 and supervision, and that the foregoing pages
15 contain a full, true and accurate record of all
16 proceedings and testimony to the best of my skill
17 and ability.

18 I further certify that I am neither counsel for
19 any party to said action, nor am I related to any
20 party to said action, nor am I in any way interested
21 in the outcome thereof.

22 IN THE WITNESS WHEREOF, I have transcribed my
23 name this 29th day of October, 2012.
24


ASHLEY SOEVYN, CSR 12019

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